IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8493 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASOPALAV COMPLEX CO-OPERATIVE HOUSING SOCIETY LTD.-1

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8493 of 1999

MR HRIDAY BUCH for Petitioner No. 1

RULE SERVED for Respondent No. 1

MR M R MENGDEY AGP for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 02/11/2004

ORAL JUDGEMENT

1. The petitioner herein has preferred this petition in order to quash and set aside the order passed by respondent no.3 dated 26/02/1993 and also the order passed by respondent no.2 dated 26/07/1999, at Annexures-B & A to the petition.

2. The petitioner is a co-operative society registered under the provisions of the Gujarat Co-Operative Societies Act. The petitioner had purchased land bearing Survey No.274/A and the competent authority had also granted permission to construct buildings as per the sanctioned plan. The sale deed was entered into by the parties on 09/01/1988 and the same was registered on 11/01/1988. Copy of the said registered sale deed is annexed at Annexure-C to the petition. On 06/01/1999, recovery notice was issued to the petitioner by respondent no.3, at Annexure-D to the petition.

3. Feeling aggrieved by the said notice issued by respondent no.3 herein, the petitioner preferred appeal being Appeal No.37 of 1999 before the Chief Controlling Revenue Authority, respondent no.2 herein. Respondent no.3 by order dated 26/07/1999, at Annexure-A to the petition, rejected the appeal preferred by the petitioner. Hence, this petition.

4. Mr.H C Buch for the petitioner has contended that respondent no.3 had passed identical orders against persons holding some part of the same land, bearing the same survey number, i.e. Survey No.274/A. He has submitted that the appeals of the persons, who had preferred appeals along with the petitioner before respondent no.2, were allowed and their matters were remanded to respondent no.3 for proper consideration. But, the appeal of the petitioner was rejected.

5. Mr.Buch has further submitted that both the orders in question were mechanically passed as it was passed without assigning any reasons and without any application of mind. He has submitted that notice was also time barred, in view of the Full Bench decision of this Court reported in 1992(1) 33-(1) G.L.R., p.654, wherein the prescribed time limit for review was declared as two years. He has, therefore, prayed for the quashing of the impugned orders in question.

6. I have heard learned counsel for the parties and perused the relevant documents on record. Though Rule was issued on 05/11/1999 and time was granted to enable the respondents to file their reply, no reply has been filed till today. Therefore, the contentions raised in the petition have not been disputed.

7. The document in question was registered on 11/01/1988 and the impugned notice was issued on 25/02/1993. Thus, the provisions contained in Section

32-(A) of the said Act have been violated by the respondents.

8. Moreover, the order passed by the respondent authority is contrary to the law declared by this Court. The Deputy Collector had no jurisdiction to issue the notice and the consequential order in question, in view of the Full Bench decision of this Court. Hence, the order of the Deputy Collector is required to be quashed and set aside on the ground that notice was issued without jurisdiction and also the impugned order was passed without following the due procedure of law. Hence, the petition is required to be allowed.

9. In the result, the petition is allowed. The order passed by respondent no.3 dated 26/02/1993, at Annexure-B to the petition, and also the order passed by respondent no.2 dated 26/07/1999, at Annexure-A to the petition, are quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(K. S. Jhaveri, J.)

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